

FRANK THOMPSON

IBLA 76-170

Decided March 1, 1976

Appeal from decision of Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M-29489-A.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence. Allowing 1 day for the rental payment to reach Billings, Montana, from Eau Claire, Michigan, is not an exercise of reasonable diligence, and inability to pay is not a justifiable reason for failure to make timely payment.

APPEARANCES: Frank Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank Thompson appeals from a decision of the Montana State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease M-29489-A. The basis for the denial was appellant's failure to exercise reasonable diligence in mailing the rental payment, as required by 30 U.S.C. § 188(c) (1970).

[1] The Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Sec. 188(c) provides the lease may be reinstated if, among other requirements, it has been shown to the satisfaction of the Secretary that the failure to make timely payment was "either justifiable or not due to a lack of reasonable diligence on the part of the lessee \* \* \*."

Appellant's lease was issued August 1, 1974, so payment of rental was due on or before August 1, 1975. The envelope in which payment was transmitted was postmarked July 31, 1975, and was received in the State Office on August 4. As appellant's payment was not made on or before August 1, the anniversary date of the lease, the lease therefore terminated by operation of law as provided by 30 U.S.C. § 188(b) (1970). Appellant received a notice of termination of the lease on August 11, 1975, and petitioned for reinstatement on August 18, 1975. He stated that his payment was not made on time because he did not have the money, and had bills to pay. On August 20, 1975, the State Office denied the petition for reconsideration because reasonable diligence was not exercised in mailing the rental payment. On appeal, Thompson essentially reiterates contentions made in his petition for reinstatement and lists payments he is making to reduce various debts.

The sole question for determination is whether appellant's failure to pay by August 1, 1975, was either justifiable or not due to a lack of reasonable diligence. 43 CFR 3108.2-1(c)(2) provides that:

\* \* \* [r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. \* \* \*

The envelope containing the rental payment was postmarked July 31, 1975. We do not find that appellant exercised reasonable diligence in allowing only 1 day for his payment to reach Billings, Montana, from Eau Claire, Michigan. W. E. Hester, Jr., 18 IBLA 420, 421 (1974).

Appellant points to his financial difficulties to explain the late payment. While we sympathize with appellant's financial straits, the fact that he did not have the money to make the rental

payment timely is not a justifiable reason for such failure to make timely payment. Faye A. Nicholas, 21 IBLA 69 (1975); Louis Samuel, 8 IBLA 268, 274 (1974). As appellant has not shown that his failure to make timely payment was either justifiable or not due to a lack of reasonable diligence, his petition for reinstatement must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joan B. Thompson  
Administrative Judge

